

App. No. 09/736,988

Response Dated: August 15, 2005

Reply to Office Action of June 14, 2005

### REMARKS/ARGUMENTS

The Office Action mailed June 14, 2005 has been received and the Examiner's comments carefully reviewed. The Office Action rejected Claims 1-20. In order to further the prosecution of this application, Claims 1, 4, 7 and 15 have been amended. For at least the following reasons, Applicants respectfully submit that the pending claims are in condition for allowance.

#### Claim Rejections under 102(e)

The Office Action rejected Claims 1-15 and 17-19 under 35 U.S.C. 102(e) as being anticipated by Klassen et al. (hereinafter "Klassen") (U.S. Patent No. 6,711,137). Applicants respectfully disagree and submit the following arguments.

The Office Action maintained the rejection as set forth in the Office Action mailed on December 8, 2004. In response to the arguments presented by the Applicants in the last response, the Office Action included the rejections as described in the December 8<sup>th</sup> Office Action. The Applicants respectfully request the Examiner to respond with specificity as to how Klassen teaches the limitations of the Applicants' claims should the Examiner disagree with Applicants responses presented within this reply. In order to advance the prosecution of this application, the Applicants have amended Claims 1, 4, 7 and 15.

As amended, Claim 1 recites, in part "automatically tuning the size of the TCP receive window based on the determined bandwidth; wherein the automatically tuning comprises setting the size of the current TCP receive window without manual intervention." It is clear that Klassen does not teach or suggest this recitation. Claim 7 has been similarly amended.

Nowhere does Klassen set the size of the window, nor does Klassen teach or suggest "setting the size of the current TCP window without manual intervention" as recited in Claim 1. Klassen merely determines recommendations for window sizes. It is left up to someone else to manually set the size of the TCP window.

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Klassen, at column 9, lines 4-9, recites "[t]he data that is obtained and stored is also used for network tuning recommendations (e.g., connection window sizes) and to assist in problem determination and capacity planning (e.g., determining the network utilization level at which a specified service level will be compromised)." Again, Klassen is only providing recommendations. Merely providing recommendations on a window size is not "automatically tuning the size of the TCP receive window" as recited in Claim 1.

The Office Action rejected Claim 4 by stating that Klassen teaches the step of "accessing the size of the TCP window from a look-up table" at column 6 lines 29-40 and column 8 line 60 to column 9 line 10. Klassen does not, however, teach accessing a look-up table. At column 6 and column 8, Klassen discusses storing the results in a database. This is significantly different from Claim 4. Claim 4, as amended, recites in part "accessing the size of the TCP receive window from a look-up table, wherein the look-up table includes at least three different sizes from which the size of the TCP receive window is selected." Claim 15 has been similarly amended. Klassen is merely storing the results to be used at a later time. Therefore, Claims 4 and 15 are allowable as amended.

#### Claim Rejections under 103(a)

The Office Action rejected Claims 16 and 20 under 35 U.S.C. 103(a) as being unpatentable over Klassen in view of Toporek et al (U.S. Patent No. 6,654,344) (hereinafter "Toporek"). The Applicants respectfully disagree. Toporek does not teach "determining a current operating system and setting the size of the TCP receive window based on the determined bandwidth and the operating system." In the columns relied upon by the Office Action, Toporek merely references various operating systems. For example, in Column 5, lines 21-40, Toporek states "many common operating systems use a default window size of only 8 KB, imposing a maximum throughput rate over a satellite link of only 128 Kbps per connection, regardless of the bandwidth of the data pipe." Additionally, there is no teaching, suggestion, or motivation to combine the references.

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The Applicants also respectfully submit that the Office Action incorrectly states on page 6 that the "Applicant's arguments with respect to claims 1-43 filed on January 23, 2004 (Paper Number 08) have been fully considered but they are not deemed to be persuasive for the claims 1-43." The Applicants note that the current application only has 20 currently pending claims and has never had 43 claims.

In view of the foregoing remarks, all pending claims are believed to be allowable and the application is in condition for allowance. Therefore, a Notice of Allowance is respectfully requested. Should the Examiner have any further issues regarding this application, the Examiner is requested to contact the undersigned attorney for the applicant at the telephone number provided below.

Respectfully submitted,

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